

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

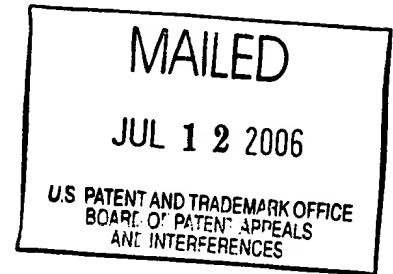
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARCEY L. KELLEY, LAURI A. DOBBS,
TONY BARTOLETTI, and SCOTT D. ELKO

Appeal No. 2006-1707
Application No. 09/964,029¹

ON BRIEF



Before HAIRSTON, SAADAT, and HOMERE, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claim 6. Claims 1-5 and 7-17 have been canceled.

We affirm.

BACKGROUND

Appellants' invention is directed to a computer-implemented system for secure patch software distribution of software from vendors to client's systems. The invention may include a system

¹ Application for patent filed September 26, 2001, which claims the filing priority benefit under 35 U.S.C. § 119 of the Provisional Application No. 60/236,413, filed September 28, 2000.

that determines which patches should be or should have been applied to a system as well as a system for backing out undesirable patches from the client's system. The system also provides for collecting patches from vendors, interpreting the client's operating system type, and the amount of memory needed to install the patch (specification, paragraph 0022). An understanding of the invention can be derived from a reading of the independent claim 6, which is reproduced as follows:

6. A computer-implemented method of secure distribution of vendor's upgrades and vendor's software patch or vendor's software patches to client's system; wherein the method utilizes such thing as vendors, vendor's ftp sites, system software, files, permissions referenced in the files, ownership of files referenced in the vendors' software patch, needed vendor's software patches, not needed vendor's software patches, directories, operating system type, operating system version, operating system architecture, memory, disk space, other layered products, other patches, and other software upgrades; comprising the steps of:

determining which of the vendor's software patches should be applied to the client's system,

collecting the vendor's software patches from the vendors by downloading them from the vendor's ftp sites,

interpreting which of the files will be affected by installation of the vendor's software patches,

interpreting which of the directories will be affected by the installation of the vendor's software patches,

interpreting the operating system type, version and architecture the vendor's software patches apply to,

Appeal No. 2006-1707
Application No. 09/964,029

interpreting dependencies on the other layered products,

determining which of the vendor's upgrades and the vendor's software patches have been applied to the client's systems,

determining which of the vendor's upgrades and the vendor's software patches should be or should have been applied to the clients system,

collection of the vendor's software patches and the vendor's upgrades from the vendors and downloading the vendor's software patches and the vendor's upgrades to the client system?

interpreting the operating system type,

interpreting the operating system version,

interpreting the operating system architecture the vendor's software patch applies to,

determining how much of the memory is needed to install the vendor's software patch and the vendor's upgrades,

interpreting how much of the memory and of the disk space is needed to install the vendor's upgrades and installing the vendor's software patches,

determining how dependencies on the other layered products affect the installation of the vendor's software patches and the vendor's upgrades,

determining how dependencies on the other patches, or the other software upgrades affect the installation of the software patch,

determining how dependencies on the other software upgrades affect the installation of the vendor's software patch,

determining which of the files will be affected by the installation of the vendor's software patch,

Appeal No. 2006-1707
Application No. 09/964,029

determining which of the directories will be affected by the installation of the vendor's software patch,

backing-out the vendor's software patches that have been applied to the client's systems,

checking the permissions and the ownership of the files referenced in the vendors' software patch and ensuring that the system software is authentic,

determining which of the vendor's software patches should be installed by determining the needed vendor's software patches and the not needed vendor's software patches,

distributing the needed vendor's software patches to the client's systems, and

installing the needed vendor's software patches.

The Examiner relies on the following reference:

T. Bartoletti et al. (Bartoletti), "Secure Software Distribution System," National Information Systems Security Conference, Baltimore, MD, October 6-7, 1997, printed February 1997, by Lawrence Livermore National Laboratory.

Claim 6 stands rejected under 35 U.S.C. § 102(b) as anticipated by Bartoletti.

Rather than reiterate the opposing arguments, reference is made to the briefs and answer for the respective positions of Appellants and the Examiner.

OPINION

Initially, Appellants argue that Bartoletti does not anticipate claim 6 as it is a non-enabling reference and merely represents a preliminary report by Appellants (brief, page 8).

Additionally, Appellants point out that the reference is much shorter than the instant application and does not include specific elements of claim 6 or their combination (id.) and therefore, does not place the public in possession of the claimed invention (brief, page 12). The Examiner responds by stating that Appellants, among other skilled artisans, were able to make the present invention based on the applied prior art (answer, page 12).

Noting that Appellants also authored the applied reference, we agree with the Examiner that the reference is indeed enabling. With respect to the Examiner's reasoning that Bartoletti is enabling since Appellants were able to make the instant invention based on the prior art disclosure, we agree with Appellants to the extent that the authors of Bartoletti are the inventors of the instant invention. However, the shorter length of Bartoletti notwithstanding, the applied reference is more than a preliminary report in that it includes sufficient information about the functionality of the software such that lack of specific codes or the process details does not render the disclosure non-enabling. Additionally, the extra details in the instant specification that Appellants argue to be missing in the applied reference (reply brief, pages 2-3), are also absent in the claimed invention. In fact, the disputed features are broad enough such that, to the

Appeal No. 2006-1707
Application No. 09/964,029

extent claimed, the reference is sufficiently enabling and places the disclosed matter in the possession of the public. See Akzo N.V. v. United States Int'l Trade Comm'n, 808 F. 2d 1471, 1479, 1 USPQ2d 1241 , 1245 (Fed. Cir. 1986).

Turning now to the 35 U.S.C. § 102 rejection of claim 6, we note that a rejection for anticipation requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to "'read on' something disclosed in the prior art reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it." See also Atlas Powder Co. v. IRECO Inc., 190 F.3d at 1346, 51 USPQ2d at 1945 (Fed. Cir. 1999) (quoting Titanium

Appeal No. 2006-1707
Application No. 09/964,029

Metals Corp. v. Banner, 778 F.2d 775, 781, 227 USPQ 773, 778
(Fed. Cir. 1985)).

Appellants only argue the last three elements of the twenty-three elements of claim 6 as missing in the applied prior art (brief, pages 9-12), to which we limit our review. Our reviewing court stated that "[i]t is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991). Additionally, arguments which Appellants could have made but chose not to make in the briefs have not been considered (37 CFR § 41.37(c)(1)(vii)). Therefore, similar to the court, this board is not under any burden to raise or consider issues that are not argued by Appellant. Therefore, only those arguments actually made by Appellants related to the three claimed elements have been considered in this decision.

Starting first with element #20 of the claim, we observe that it is identified by Appellants as the step of:

"[c]hecking the permissions and the ownership of the files reference in the vendors' software patch and ensuring that the system software is authentic;"
(brief, page 9).

Appellants assert that this step requires two positive separate actions, "checking the permissions and the ownership of the

files" and "ensuring that the system software is authentic" (brief, page 10). Appellants further argue that the part related to ensuring the system software authenticity is absent in Bartoletti (id.). The Examiner responds by stating that Appellants' own specification (paragraph 0026) provides the relevant description for this step as "... SafePatch checks the permissions and ownership of the files references in the patch and ensures that the system software is authentic" (answer, page 6). The Examiner concludes that similar to Appellants' disclosed process, Bartoletti checks permissions and ownership of the files to ensure authenticity (answer, page 7).

We agree with the Examiner's position that checking permissions and ownership of the files and ensuring authenticity of the system software are described by Bartoletti to be related. Although, as pointed out by the Examiner, Appellants' specification is not clear as to how the authenticity of the system software is ensured, the applied prior art does teach both checking the permissions and ownership of the files referenced in the patch and ensuring the authenticity of the system software. In particular, we agree with the Examiner (answer, pages 8-9) that Bartoletti discloses assessment and authentication of system software in relation with installing patches and detecting their subsequent tampering (page 3, paragraphs 3 and 5).

Bartoletti further describes a patch specification which contains permissions and ownership for each file and directory manipulated by the patch in addition to other information such as operating system type, version and architecture (page 5). Therefore, even if this element of claim 6 relates to two different actions, we find that to the extent disclosed, both actions are described in the reference.

Appellants further argue that element #21 also includes two separate actions of "determining which of the vendor's software patches should be installed by determining the needed vendor's software patches," ... "and the not needed vendor's software patches" (brief, page 10; reply brief, page 5). Appellants assert that the reference does not teach the portion related to determining the "not needed vendor's software patches" (brief, page 10). In response, the Examiner points out that it is inherent that by determining the software patches that are needed, those that are not needed will also be determined (answer, page 9). Pointing to portions in pages 4, 6, and 9 of Bartoletti, the Examiner argues that choosing the patches that are not installed reads on the steps of determining the patches that are not needed (answer, page 10).

Although the Examiner's characterization of the not needed patches, appears to encompass the not needed as well as the not

chosen patches, the system manager is described as knowing which patches are needed for each system (page 3, paragraph 3). Therefore, once those that are needed are determined, everything else will be in the "not needed" group as shown by the description of the system administrator's decisions not to install or back out.

Turning now to the step recited in the claim element before the last, Appellants argue that the relied on portion of Bartoletti does not disclose the step of "distributing the needed vendor's software patches to the client's systems" (brief, page 11). The Examiner points to various references made to "installing upgrades or patches" and argues that getting patches from a centralized patch collector (Figure 2) and installing them on the target system reads on the claimed "distributing the needed vendor's software patches to the client's systems" (answer, pages 11-12).

We agree with the Examiner that determining which new patches are released and installing them on the client's system includes distributing the patches before they can be installed. Furthermore, as pointed out by the Examiner (answer, page 12), Figure 2 of Bartoletti shows a centralized patch collection service which actually provides the needed patches to the systems configured to support the evaluation and installation of the

Appeal No. 2006-1707
Application No. 09/964,029

patches (page 7, paragraph 3). These systems would get their patches from the centralized patch collectors which indicates that such patches are "distributed" to the client's systems.

Based on our findings above, we agree with the Examiner that Bartoletti prima facie anticipates the claimed subject matter in the independent claim 6. Accordingly, the 35 U.S.C. § 102(b) rejection of claim 6 is sustained.

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claim 6 under 35 U.S.C. § 102 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

Appeal No. 2006-1707
Application No. 09/964,029

AFFIRMED


KENNETH W. HAIRSTON

KENNETH W. HAIRSTON
Administrative Patent Judge

Mahshid D. Adadi

MAHSHID D. SAADAT
Administrative Patent Judge

Jean R. Homere

JEAN R. HOMERE
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Appeal No. 2006-1707
Application No. 09/964,029

Eddie E. Scott
Assistant Laboratory Counsel
Lawrence Livermore National Laboratory
P.O. Box 808, L-703
Livermore, CA 94551